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**FACSIMILE TRANSMISSION COVER SHEET**

DATE: APRIL 19, 2004

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TO: EXAMINER SUSAN UNGAR, PhD

COMPANY: UNITED STATES PATENT AND TRADEMARK OFFICE

FROM: JOHN Q. McQUILLAN, ESQ.

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Date: April 19, 2004

APR 19 2004

  
JOHN Q. McQUILLAN, Reg. No. 19,805

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICANT : Samuel Rose, M.D. (Deceased June 3, 2001)  
SERIAL NO. : 08/782,590  
FILED : October 30, 2003  
FOR : A METHOD AND COMPOSITION FOR  
TREATING CANCER BY CONVERTING  
SOLUBLE RADIOACTIVE TOXIC  
AGENTS INTO INSOLUBLE RADIO-  
ACTIVE TOXIC PRECIPITATES VIA  
THE ACTION OF NON-MAMMALIAN  
ENZYMES BOUND TO THE NON-  
ENDOCTYOSING RECEPTORS OF  
TARGET CELLS  
EXAMINER : Susan Ungar, Ph.D.  
GROUP ART UNIT : 1642

125 Crestwood Avenue  
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April 19, 2004

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Commissioner for Patents  
P. O. Box 1450  
Arlington, Virginia 22313-1450

**REQUEST TO HAVE FINAL REJECTION OF MARCH 26, 2004  
WITHDRAWN AS BEING PREMATURE**

I. The above-identified patent application was filed as a continuation application on

October 30, 2003, following the final rejection of Claims 69-82 in the Action mailed on May 1, 2003.

II. The continuation application comprised twenty-three pages and included Claims 1-83, of which Claims 69-82 were rejected in the Final Action of May 1, 2003.

III. The continuation application was filed on October 30, 2003 by Express Mail, with the following:

- (1) Petition and Fee For Extension Of Time for a period of three (3) months, extending to October 30, 2003;
- (2) A check for \$475.00 for the three (3) months' extension;
- (3) Preliminary Amendment, dated October 30, 2003, which included Claims 1-83; and
- (4) A check for \$952.00 for the continuation application filing fee.

IV. The Action, mailed March 26, 2004, is incomplete and therefore confusing; and indicative of a failure by the Examiner to issue an Action which is correct, complete, and clear:

- (1) Box 4 is not checked;
- (2) Box 6 is not checked.

V. In "Disposition of Claims", it is admitted by the Examiner that Claims 1-82 and 88 are pending.

VI. It is premature and improper for the Examiner to suggest, much less state, that the applicant has elected Claims 69-82 and 88 to be examined. The applicant (a) filed Claims 1-83 on October 30, 2003, (b) paid the three- months' extension fee; and (c) paid the Filing Fee of \$952.00 for Claims 1-83.

VII. The applicant is entitled to a requirement of restriction if the Examiner is unwilling to examine all eighty-three claims. Therefore, if a requirement for restriction had been made by the Examiner of Claims 1-68 and 69-83, the applicant could have elected either Claims 1-68 or 69-83 to be examined.

Since the Examiner admits in the Action of March 24, 2004 that there are eighty-three Claims in the application, the Examiner chose to short-cut the examining procedure by restricting

the Action to a group of the total filed claims, viz., Claims 69-83, without issuing a requirement of restriction.

VIII. The Action of March 24, 2004 evidences an inexplainable effort by the Examiner to avoid addressing the continuation application, Serial No. 08/782,590, filed on October 30, 2003. Instead, the Examiner has chosen to replay word-for-word (a) the "Claim Rejections 35 U.S.C. 112" (pages 3-11, paragraphs 3-6); (b) "New Grounds of Rejection "Claim Rejections 35 U.S.C. 112" (pages 11-13, page 13, paragraph 9 paragraphs 7 and 8), and (c) "New Grounds of Rejection," (page 13, paragraph 9) from the Action mailed on May 1, 2003 in the Final Rejection of the parent application Serial No. 08/782,590, filed on August 13, 2001.

IX. The reliance by the Examiner in the Action of March 26, 2004 upon MPEP 706.07(b) is improper since MPEP 706.07(b) states:

"7.41. Action Is Final, First Action

This is a [1] of applicant's earlier application no. [2]. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and out of record in the next Official Action if they had been entered in the earlier application."


"...if they had been entered in the earlier application" is the statutory requirement which the Examiner either has overlooked or does not understand. Claims 1-83 were entered in the earlier application, as stated by the Examiner. Thus, the filing receipt of the earlier application, Serial No. 08/782,590, filed on August 13, 2001, contained 83 Claims.

X. The applicant is entitled at this time, in spite of the incorrect Action of March 26, 2004, to be given the opportunity to elect the claims to be examined in this application, viz., Claims 1-68, instead of the previously rejected Claims 69-83.

Accordingly, the applicant requests that a proper requirement for restriction be now made and that the Action mailed on March 24, 2004 be withdrawn.

If the Examiner is not willing to issue promptly a new and correct Action in the reply period of the first and Final Action of March 26, 2004, the applicant will lodge an appeal of the incorrect and damaging Action of March 26, 2004.

Respectfully submitted,

  
John Q. McQuillan  
Reg. No. 19,805